

TITLE MC-11
DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 1
RULES OF THE CIVIL SERVICE COMMISSION

CHAPTER 101

PURPOSE AND DEFINITIONS

§11-101-1 Purpose of chapter; statement of policy
§11-101-2 Applicability of rules
§11-1-3 Repealed
§11-1-4 Repealed
§11-1-5 Repealed
§11-1-6 Repealed
§11-1-7 Repealed
§11-101-8 Definitions
§11-101-9 Severability

§11-101-1 Purpose of chapter; statement of policy.
The purpose of this chapter is to set forth the practice and procedures as:

(a) An appellate board to decide appeals from any action under chapter 76, Hawaii Revised Statutes, taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals relating to:

- (1) Recruitment and examination;
- (2) Classification and reclassification of a particular position;
- (3) Initial pricing of classes;
- (4) Other employment actions under chapter 76, Hawaii Revised Statutes, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes.

(b) The merit appeals board to receive and act on petitions received from civil service employees excluded from collective bargaining on any adverse action by the appointing authority based on failure by the employee to meet performance requirements of the employee's position. The merit appeals board shall use the conditions in section 76-41(c), Hawaii Revised Statutes, as tests in reaching a decision on whether the employer's action was with or without merit. [Eff 6/11/95; am, ren §11-101-1 and comp 12/23/02] (Auth: HRS §§76-14, 76-47, 76-71) (Imp: HRS §91-2)

§11-101-2 Applicability of rules. These rules shall apply the merit system to all county positions and all incumbents of such positions as it relates to recruitment and examination of applicants seeking employment in the civil service, classification and reclassification of positions, initial pricing of positions, demonstrated appropriate conduct and productive performance of those in the civil service, and any adverse employment actions related to the foregoing. These rules shall not apply to positions in the exempt service. These rules shall apply to employees who are members of or pay service fees to a collective bargaining unit only to matters regarding classification/reclassification of positions and initial pricing. [Eff 6/11/95; am, ren §11-101-2 and comp 12/23/02] (Auth: HRS §§76-14, 76-47, 76-71) (Imp: HRS §§76-17, 91-2)

§11-1-3 Repealed. [R 12/23/02]

§11-1-4 Repealed. [R 12/23/02]

§11-1-5 Repealed. [R 12/23/02]

§11-1-6 Repealed. [R 12/23/02]

§11-1-7 Repealed. [R 12/23/02]

§11-101-8 Definitions. Unless otherwise indicated by the context, words used in these rules are understood to have the following special meanings:

"Agency" means each county board, commission, department, or officer authorized by law to make rules and regulations or to adjudicate contested cases, except those in the legislative branch.

"Allocation" means the placement of a position in a specific class on the basis of its duties, responsibilities, and qualification requirements.

"Appointing authority" means the head of a department in whom is vested the power of appointment and dismissal; which term includes subordinates to whom the department head has specifically delegated authority for personnel management functions.

"Attorney General" means the attorney general of the State of Hawaii.

"Calendar day" or "day" means a period which begins at midnight and ends twenty-four hours later at midnight.

"Chair" means the chairperson of the civil service commission of the County.

"Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

"Chief executive" means the mayor of the County of Maui.

"Civil service" includes all positions within a jurisdiction that are not exempted by sections 46-33, 76-16, or 76-77 of the Hawaii Revised Statutes, or by other law and must be filled through civil service recruitment procedures based on merit.

"Civil service employee" means an employee who has met all requirements for membership in the civil service under section 76-27, Hawaii Revised Statutes.

"Civil service law" means chapter 76 of the Hawaii Revised Statutes, as amended. Unless the context of a specific rule clearly indicates otherwise, all terms used herein shall have the same meaning as in the civil service law.

"Civil service system" means the merit system. See merit system.

"Class" or "class of work" means all positions which are sufficiently similar with respect to their duties, responsibilities, and authority and level of difficulty that the same descriptive title may be used to describe each position allocated to the class, that the same basic requirements as to education, experience, knowledge, skill, ability, and other qualifications are applicable, and that the same pay range may be assigned.

"Classification" means the process of grouping positions into classes on the basis of substantial similarity with respect to kinds and levels of work and qualifications required for performance and defining each grouping.

"Classification plan" means a plan in which classes are arranged in a logical and systematic order.

"Commission" means the civil service commission of the County of Maui.

"Compensation plan" means the pay plan consisting of the assignment of all classes in the classification plan to ranges in the appropriate salary schedules on the basis of relative worth.

"Corporation Counsel" means the corporation counsel of the County.

"County" means the County of Maui, State of Hawaii.

"County Clerk" means the county clerk of the County.

"Demotion" means a movement of a regular employee from the position in which the employee last held permanent appointment to another position:

- (1) Which is assigned to a class with a lower pay range in the same salary schedule; or
- (2) Which is assigned to a class with a lower maximum rate of compensation in a different salary schedule and the dollar difference between the two

maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that a rate of five percent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Department" means the department of personnel services of the County.

"Deputy attorney general" means a deputy attorney general for the State of Hawaii.

"Deputy corporation counsel" means a deputy corporation counsel for the County.

"Deputy director" means the deputy director of the department of personnel services.

"Director" means the director of personnel services of the County or the director's designated representative.

"Dismissal" means an action taken by the appointing authority discharging an employee for just cause.

"Employee" or "public employee" means any person holding a position in the service of a jurisdiction, irrespective of status or type of appointment; provided that, if the context clearly applies only to an employee who is a member of the civil service, "employee" means a civil service employee.

"Employer" or "public employer" means the mayor of the County.

"Excluded from collective bargaining" means employees not included in any bargaining unit pursuant to section 89-6(f), Hawaii Revised Statutes.

"Examination" means a means of measuring the qualifications of applicants for employment in given classes or positions.

"Exempt employee" means a person who is appointed to and who occupies a position exempted pursuant to section 76-77, Hawaii Revised Statutes.

"Hawaii labor relations board" means the Hawaii labor relations board of the State of Hawaii.

"Hearing" means any proceeding governed by sections 76-14, 76-47, 91-8 and 91-9, Hawaii Revised Statutes, and other applicable statutes.

"Holiday" means the day of the week on which a legal holiday is observed pursuant to chapter 8, Hawaii Revised Statutes, as amended, and as provided by these rules.

"HRS" means the Hawaii Revised Statutes, as amended from time to time.

"Mayor" means the mayor of the County.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction, or advisory power.

"Merit appeals board" means the civil service commission of the County.

"Merit principle" means the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance.

"Merit system" means the system based on merit principles within the meaning of section 76-1, Hawaii Revised Statutes, as amended, and Article XIV, Section 1, of the Hawaii State Constitution.

"Minimum qualification" means the minimum experience, education, licensing, and other special requirements essential for performance in a class of work or a position.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as a right to be admitted as a party in a proceeding.

"Pay range" means the group of salary rates from minimum to maximum to which a class may be assigned as set forth in each salary schedule. The maximum rate in the pay range determines whether another pay range is higher or lower.

"Person" includes individuals, partnerships, corporations, associations, or public or private

organizations of any character other than governmental agencies.

"Position" means a specific job, whether occupied or vacant, consisting of all the duties and responsibilities assigned or delegated by competent authority, requiring the full or part-time employment of one person.

"Presiding officer" with respect to proceedings, means the chair, and includes any member of the commission designated as such, or such other persons authorized by law to conduct hearings.

"Pricing" means the process of assigning classes to pay ranges in proper relationship to one another.

"Proceedings" means the commission's record of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the commission's jurisdiction, initiated by a filing or submittal or request or a commission's notice or order. It shall include proceedings involving the adoption, amendment or repeal or any rule or regulation of the commission, whether initiated by commission order or notice or by petition of an interested person.

"Promotion" means a movement of a regular employee from the position in which the employee last held permanent appointment to another position:

- (1) Which is assigned to a class with a higher pay range in the same salary schedule; or
- (2) Which is assigned to a class with a higher maximum rate of compensation in a different salary schedule and the dollar difference between the two maximum rates is more than the dollar difference between the minimum and second step of the former pay range; provided that a rate of five percent more than the minimum rate of the range shall be deemed to be equivalent to the second step in the EM schedule; provided further, that a rate of ninety-five percent of the single rate of a salary schedule with a single rate pay range shall be deemed equivalent to the minimum or first step of the pay range.

"Reallocation" means the movement of a position from one class to another class on the basis of the specific

duties, level of difficulty and authority, responsibilities, and qualification requirements.

"Recruitment" means the process of locating applicants for employment.

"Repricing" means the reassignment of classes from one pay range to another.

"Rule" means any statement of the director/commission constituting a rule as defined in section 91-1, Hawaii Revised Statutes.

"Salary schedule" means a table of pay rates and ranges.

"State" means the State of Hawaii.

"Suspension" means a period of leave without pay as a disciplinary action.

"Termination" means the severing of an employee's employment with an employer. It may be at the employee's initiative or that of the employer.

"Week" means a period of seven consecutive calendar days beginning on Sunday and ending seven days later on Saturday. [Eff 6/11/95; am, ren §11-101-8 and comp 12/23/02] (Auth: HRS §§76-14, 76-47, 76-71, 76-42, 76-43, 76-103, 79-12, 80-4, 82-5, 83-3) (Imp: HRS §§76-71, 76-1, 76-12, 76-13, 76-15, 76-16, 76-17, 76-18, 76-27, 76-30, 76-41, 76-42, 76-43, 76-45, 76-46, 76-47, 78-1, 396-6, 831-2; Chapter 43, Title 38, U.S.C.)

§11-101-9 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff 6/11/95; ren §11-101-9 and comp 12/23/02] (Auth: HRS §91-2) (Imp: HRS §91-2)

TITLE MC-11

DEPARTMENT OF PERSONNEL SERVICES

SUBTITLE 1

RULES OF THE CIVIL SERVICE COMMISSION

CHAPTER 102

RULES OF PRACTICE AND PROCEDURE OF THE CIVIL SERVICE COMMISSION

Subchapter 1 General Provisions

§11-102-1	Authority
§11-102-2	Purpose and construction of rules
§11-102-3	Limitation of jurisdiction
§11-102-4	Procedure and terms
§11-102-5	Office of the commission

Subchapter 2 Procedures of the Commission

§11-102-6	Meetings
§11-102-7	Hearings
§11-102-8	Quorum and number of votes necessary to validate acts
§11-102-9	Minutes
§11-102-10	Administration

Subchapter 3 Proceedings Before the Commission

§11-102-11	General provisions
§11-102-12	Appearances and practices before the commission
§11-102-13	Disqualification of commissioner or hearing officer

Subchapter 4 Filing Procedures Before the Commission

§11-102-14	Consolidation
------------	---------------

§11-102-15	Filing of documents
§11-102-16	Amendments of documents and dismissal
§11-102-17	Retention of documents
§11-102-18	Computation of time
§11-102-19	Service of process
§11-102-20	Decision of the commission

Subchapter 5 Rulemaking Procedures of the Commission

§11-2-21	Repealed
§11-102-22	Initiation of rulemaking
§11-102-23	Notice of public hearing
§11-102-24	Conduct of hearing
§11-102-25	Commission action
§11-102-26	Emergency rulemaking
§11-102-27	Filing of rules
§11-102-28	Taking effect of rules
§11-102-29	Publication of rules

Subchapter 6 Rules Applicable to Declaratory Rulings

§11-2-30	Repealed
§11-102-31	Petitions for declaratory rulings
§11-102-32	Request for hearing
§11-102-33	Applicability of order
§11-102-34	Declaratory ruling on commission's own motion
§11-102-35	Refusal to issue declaratory ruling

Subchapter 7 Rules Applicable to Appeals

§11-102-36	Standing to appeal
§11-102-37	Filing of appeal
§11-102-38	Notice
§11-102-39	Appeal hearing
§11-102-40	Commission action
§11-102-40.1	Mediation
§11-102-41	Findings and decision
§11-102-42	Notice of decision
§11-102-43	Counsel
§11-102-44	Judicial review
§11-102-45	Severability

SUBCHAPTER 1

GENERAL PROVISIONS

§11-102-1 Authority. These rules govern practice and procedure before the civil service commission of the County of Maui under civil service laws, chapter 76, Hawaii Revised Statutes, as modified by chapter 89, Hawaii Revised Statutes, Hawaii Administrative Procedure Act, chapter 91, Hawaii Revised Statutes, chapter 92, Hawaii Revised Statutes, and such other related acts as may now or hereafter be administered by the civil service commission and its appointed director of personnel services. [Eff 6/11/95; am, ren §11-102-1 and comp 12/23/02] (Auth: HRS §91-2)(Imp. HRS §§ 91-2, 92-1)

§11-102-2 Purpose and construction of rules.
(a) These rules provide for the dissemination of information in accordance with chapters 91 and 92, Hawaii Revised Statutes, and establishes procedures whereby any interested person may petition for the adoption, amendment or repeal of rules and regulation pursuant to section 91-6, Hawaii Revised Statutes, and may petition for declaratory ruling pursuant to section 91-8, Hawaii Revised Statutes, on any matter within the jurisdiction of the civil service commission of the County of Maui.

(b) The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every proceeding. [Eff 6/11/95; am, ren §11-102-2 and comp 12/23/02] (Auth: HRS §§76-71, 76-47) (Imp. HRS §§91-2, 92-1)

§11-102-3 Limitation of jurisdiction. (a) Any person suffering legal wrong by a recruitment or examination action or aggrieved by such action shall be entitled to appeal. Any employee covered by chapter 76, Hawaii Revised Statutes, suffering legal wrong by a classification-reclassification and/or initial pricing of a class shall be entitled to appeal. Employees covered by chapter 76, who are excluded from collective bargaining suffering legal wrong by employment actions under chapter 76, including disciplinary actions and adverse actions for failure to meet performance requirements shall be entitled to appeal.

(b) The civil service commission shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;

(c) The civil service commission shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;

(d) The civil service commission shall not proceed on an appeal unless all internal complaint procedures, including administrative review and departmental complaint procedures, have been exhausted; and

(e) The civil service commission shall use the conditions listed in section 76-41(b), Hawaii Revised Statutes, in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit. [Eff 6/11/95;

am, ren §11-102-3 and comp 12/23/02] (Auth: HRS §§76-14, 76-47 76-71,)(Imp. HRS §§89-10, 91-2)

§11-102-4 Procedure and terms. (a) Statutory terms. The terms used in rules promulgated by the commission pursuant to powers granted by statute shall have the meaning defined by such statute, unless the context otherwise specifically requires.

(b) Terms defined by rule. A rule or regulation that defines a term without express reference to the statute or to these rules or to a portion thereof, defines such terms for all purposes as used both in the statutes and in these rules, unless the context otherwise specifically requires.

(c) Use of number and gender. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to females. [Eff 6/11/95; am, ren §11-102-4 and comp 12/23/02] (Auth: HRS §§76-71, 76-47)(Imp. HRS §91-2)

§11-102-5 Office of the commission. (a) The office of the commission is located in Wailuku, Maui, Hawaii, at the following address:

CIVIL SERVICE COMMISSION
c/o Department of Personnel
Services

County of Maui
200 South High Street
Wailuku, Hawaii 96793

(b) The office hours of the civil service commission shall be determined by the chief executive and as otherwise provided by statute or executive order.

(c) Rules relating to government records are as follows:

- (1) Files of the commission. The term "government records" as used in this part is defined as in section 92F-3, Hawaii Revised Statutes, and shall include all rules, regulations, written statements of policy of interpretations formulated, adopted, or used by the commission and/or the director, all complaints, opinions or orders, written testimony, minutes of meetings of the commission and any other material on file in the office of the commission unless accorded confidential treatment pursuant to law or the rules of the commission;
- (2) Inspection of government records. All government records will be available for inspection in the office of the commission, Wailuku, Hawaii, during established office hours unless public inspection of such records is in violation of any state or federal law; provided that, except where such records are open under any rule of court, the corporation counsel may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the commission, director, state or any governmental agency or subdivision is or may be a party, or when the inspection of such records is in violation of law and are deemed necessary for the protection of the character of any person;

- (3) The public may obtain information as to matters within the jurisdiction of the commission by inquiring at:
 - (A) The office of the lieutenant governor, State of Hawaii, State capitol building, Honolulu, Hawaii, where there are, on file, all rules and regulations of the commission;
 - (B) The office of the county clerk, Wailuku, Maui, Hawaii, where there are, on file, all rules and regulations of the commission; or
 - (C) The department of personnel services, Wailuku, Maui, Hawaii, where there are, on file, all public records within the jurisdiction of the commission;
- (4) Requests for public information, for permission to inspect government records or for copies of government records shall be handled expeditiously. Any material with respect to the commission will not be released without the approval of the chair or the chair's delegate;
- (5) Copies of government records printed or reproduced by the commission shall be given to any person requesting same and paying fees established by the commission or by law or ordinance; and
- (6) Denial of information. Any person denied the right to government information, to inspect records or to copies of government records may apply to the office of information practices and/or the circuit court of the circuit wherein the government record is found for an order permitting the right to government information, to

inspect government records, or to
copies of government records. [Eff
6/11/95; am, ren §11-102-5 and comp
12/23/02] (Auth: HRS §§76-71, 76-47,
91-2) (Imp. HRS §91-2)

SUBCHAPTER 2

PROCEDURES OF THE COMMISSION

§11-102-6 Meetings. (a) The commission may meet and exercise its powers in any part of the County.

(b) All meetings of the commission, except executive meetings governed by sections 91-8 and 91-9, Hawaii Revised Statutes, shall be open to the public.

(c) The commission may hold an executive meeting, closed to the public, upon an affirmative vote, taken at an open meeting, of two-thirds of the members present. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting shall be recorded and entered into the minutes of the meeting. A meeting closed to the public may be held only for one or more of the following purposes:

- (1) To consider the hire, evaluation, dismissal or discipline of an officer or employee or charges brought against him, where consideration of matters affecting privacy will be involved; provided, that if the individual concerned requests an open meeting, an open meeting shall be held;
- (2) To consult with the commission's attorney;
- (3) To investigate proceedings regarding criminal misconduct;
- (4) To consider sensitive matters related to public safety or security; and
- (5) To exercise the adjudicatory functions of the commission pursuant to sections 91-8 and 91-9, Hawaii Revised Statutes, or as authorized by other

sections of the Hawaii Revised Statutes.

(d) The rules governing meetings shall not apply to any chance meeting, as defined by section 92-2, Hawaii Revised Statutes, at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit of requirements of the meetings' provisions to make a decision or to deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction or advisory power.

(e) Special meetings of the commission for the transaction of its business may be held at any time and place as scheduled by the commission.

(f) Meetings by video conference shall be held in accordance with section 92-3.5, Hawaii Revised Statutes.

(g) If the commission finds that an imminent peril to the public health, safety or welfare requires a meeting in less time than is provided for in section 11-102-6(h)(3), the commission may hold an emergency meeting provided:

- (1) the commission states in writing the reasons for its findings;
- (2) two-thirds of all members to which the commission is entitled agree that an emergency exists;
- (3) an emergency agenda and the findings are filed with the office of the county clerk of the County of Maui and in the commission's office; and
- (4) persons requesting notification pursuant to section 11-102-6(h)(6) are contacted by mail or telephone as soon as practicable.

(h) Rules regarding notice of meetings shall be as follows:

- (1) The commission shall give written public notice of any regular, special or rescheduled meeting;
 - (2) The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time and place of the meeting;
 - (3) The commission shall file the notice in the office of the county clerk and in the commission's office for public inspection at least six calendar days before the meeting;
 - (4) The notice shall also be posted at the site of the meeting whenever feasible;
 - (5) The commission shall not add items to the agenda, once filed, without two-thirds recorded vote of all members to which the commission is entitled; provided that no item shall be added to the agenda in the manner provided herein, if it is of reasonable major importance and action thereon by the commission will affect a significant number of persons; and
 - (6) The commission shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under section 11-102-6(h)(3). The notice may, however, be transmitted by either facsimile or electronic mail at the person's request.
- (i) The provisions requiring open meetings shall be liberally construed and the provisions providing for exceptions to open meeting requirements shall be strictly construed against

closed meetings. [Eff 6/11/95; am, ren §11-102-6 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2, 92-3.5)(Imp: HRS §91-2)

§11-102-7 Hearings. (a) In contested cases or as otherwise provided by statute or these rules, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include a statement of:

- (1) The date, time, place, and nature of the hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved; and
- (5) The fact that any party may retain counsel if the party so desires. [Eff 6/11/95; am, ren §11-102-7 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-8 Quorum and number of votes necessary to validate acts. A majority of all members to which the commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the commission is entitled shall be necessary to make valid any action of the commission. [Eff

6/11/95; am, ren §11-102-8 and comp 12/23/02]
(Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §91-2)

§11-102-9 Minutes. (a) The commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the commission recorded as either present or absent;
- (3) The substance of all matters proposed, discussed or decided and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the commission requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with chapter 92F, Hawaii Revised Statutes, provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

[Eff 6/11/95; am, ren §11-102-9 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §91-2)

§11-102-10 Administration. (a) The chair of the commission shall be responsible for the administrative functions of the commission.

(b) All decisions, orders and other actions of the commission shall be authenticated or signed by the commissioners acting in such proceeding or by the chair upon delegation by the commissioners acting in such proceeding. Official copies of decisions, orders and other commission actions may be promulgated under the signature of the chair of the commission or the chair's delegate.

(c) Delegation of administrative duties shall be as follows:

- (1) The commission may delegate to any competent and qualified individual such power or authority vested in the commission as may be authorized by law for the effective administration of chapter 76, Hawaii Revised Statutes, except the power to make, amend or repeal rules and regulations; and
- (2) The commission may, by written resolution adopted by a majority of the members to which it is entitled, appoint a competent and qualified disinterested person to act as its hearing officer.
 - (A) The hearing officer shall hear the matter in the same manner as if it were before the commission.
 - (B) Upon the conclusion of the hearing, the hearing officer shall transmit to the commission a record of the hearing, including a recording or transcript and a summary of evidence taken at said hearing.
 - (C) After review of the testimony and evidence, a majority of the members to which the commission is entitled shall render a decision in accordance with the

procedures set forth in section
91-11, Hawaii Revised Statutes.
[Eff 6/11/95; am, ren §11-102-10
and comp 12/23/02] (Auth: HRS
§§76-71, 76-47, 91-2) (Imp: HRS
§91-2)

SUBCHAPTER 3

PROCEEDINGS BEFORE THE COMMISSION

§11-102-11 General provisions. (a) All documents required to be filed with the commission shall be filed at the office of the commission at Wailuku, Maui, Hawaii, within the time limits and in the form and manner prescribed by law, rules or order of the commission.

(b) Requests for public information, copies of official documents or opportunity to inspect records may be made in writing or in person at the office of the commission.

(c) The commission may, on its own motion or upon the petition of any interested person or agency of the federal, state or county government, hold such proceedings as it may deem necessary in the performance of its duties of the formulation of its rules and regulations.

(d) Procedures to be followed by the commission shall, unless specifically prescribed in these rules or by the Hawaii Administrative Procedure Act or by any other statute, be such as in the opinion of the commission will best serve the purpose of such proceeding. [Eff 6/11/95; am, ren §11-102-11 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §91-2)

§11-102-12 Appearances and practices before the commission. (a) Appearances before the commission may be as follows:

- (1) A public employee or applicant may appear on their own behalf or through or with a person or persons duly designated and authorized by such employee or applicant;

- (2) An employee organization may be represented by a person or persons duly designated and authorized by the employee organization; and
 - (3) A public employer or appointing authority may appear on their own behalf or through a person or persons duly designated and authorized by such employer or appointing authority.
- (b) In any proceeding under these rules, any public employee, applicant, employee organization, public employer or appointing authority may be represented by counsel or any other person who has obtained written or verbal authority.
- (1) When an individual acting in a representative capacity appears in person or signs a paper in practice before the commission, the personal appearance or signature shall constitute a representation to the commission that, under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf such individual acts; and
 - (2) The commission may at any time require any person transacting business with the commission in a representative capacity to show the person's authority and qualification to act in such capacity.
- (c) Bar to appearance:
- (1) No individual who has been associated with the commission as a member, officer, employee or counsel shall be permitted to appear before the commission in behalf of or to represent in any manner any party in connection with any proceeding or

matter that such individual has handled or passed upon while associated in any capacity with the commission;

- (2) No person or agency appearing before the commission in any proceeding or matter shall, in relation thereto, knowingly accept assistance from and compensate any individual who would be barred by section 11-102-12(c);
- (3) No person who has been associated with the commission as a member, officer, employee or counsel thereof shall be permitted to appear before the commission in behalf of, or to represent in any manner, any person or agency in connection with any proceeding or matter that was pending before the commission at the time of the person's association, unless the person shall first have obtained the written consent of the commission, upon a verified showing that the person did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during the person's association with the commission; and
- (4) This section shall not apply to any individual or agency who has terminated the individual's or agency's association with the commission for a period of one year.
[Eff 6/11/95; am, ren §11-102-12 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §91-2)

§11-102-13 Disqualification of commissioner or hearing officer. (a) Any party to a hearing may, up to five days before the proceeding, file an affidavit that one or more of the commissioners or a hearing officer has a personal bias or prejudice.

- (1) The commissioner against whom the affidavit is so filed may answer the affidavit or may file a disqualifying certificate with the commission;
- (2) If the commissioner or hearing officer chooses to answer the affidavit, the remaining commissioners shall decide by a majority of all the members to which the commission is entitled whether that commissioner or hearing officer should be disqualified from proceeding therein; and
- (3) Every such affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least five days before the hearing, or good cause shall be shown for the failure to file it within such time.

(b) Any commissioner or hearing officer may be recused by filing with the chair a certificate of recusal citing their reason to preside with impartiality in the pending hearing. [Eff 6/11/95; am, ren §11-102-13 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §91-2)

SUBCHAPTER 4

FILING PROCEDURES BEFORE THE COMMISSION

§11-102-14 Consolidation. The commission may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 6/11/95; am, ren §11-102-14 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-15 Filing of documents. The filing of documents shall be as follows:

- (1) All requests, petitions and other papers required to be filed with the commission in any proceeding shall be filed at the office of the commission at Wailuku, Hawaii, within the time limits prescribed by law, the rules or orders of the commission;
- (2) The date on which the papers are received shall be regarded as the date of filing, and the commission shall not be responsible for delays caused by circumstances beyond its control;
- (3) All requests, petitions and appeals filed with the commission shall be:
 - (A) Written in black ink, typewritten, or printed; and
 - (B) Shall be plainly legible; and
 - (C) Shall be on strong durable paper no larger than 8-1/2" x 14" in

size, except that maps, charts, tables and other like documents may be larger, folded to the size of the papers to which they are attached;

- (4) Petitions for appeals, amendment, adoption or repeal of rules and regulations, and declaratory rulings shall be made on forms prescribed by the commission. Forms may be secured from the commission;
- (5) All documents must be signed in indelible ink by the party signing the same or the party's duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of the person's knowledge, information and belief, every statement contained therein is true and no such statement is misleading; and that it is not interposed for delay;
- (6) Unless otherwise specifically provided by a particular rule or order papers filed with the commission shall consist of an original and six copies; and
- (7) All documents filed by any person or agency in any proceeding shall state on the first page thereof the name, mailing address and telephone number, if any, of the individual or individuals who has filed such documents and who shall be served with any documents. [Eff 6/11/95; am, ren §11-102-15 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-16 Amendment of documents and dismissal. If any document filed in a proceeding is not in substantial conformity with the applicable rules of the commission as to contents thereof, or is otherwise insufficient, the commission may, on its own motion or on motion of any party, strike such document or require its amendment. If amended, the document shall be effective as of the date of receipt of the amendment. [Eff 6/11/95; am, ren §11-102-16 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-17 Retention of documents. All documents filed with or presented to the commission shall be retained in the files of the commission. The commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents. [Eff 6/11/95; am, ren §11-102-17 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-18 Computation of time. (a) Computing any period of time prescribed or allowed by these rules or order of the commission, the following shall apply:

- (1) The day of the act, event or default, after which the designated period of time is to run, is not to be included;
- (2) The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday nor a holiday;

(3) Intermediate Saturdays, Sundays and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less; and

(4) A half holiday shall be considered as other days and not a holiday.

(b) Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by these rules, the commission, upon motion and the concurrence of a majority of all the members to which the commission is entitled, may permit the act to be done after expiration of the specified period if such delinquency is clearly shown to have been the result of excusable neglect. This provision shall not apply to the twenty calendar days limitation under section 11-102-37, filing of appeals. [Eff 6/11/95; am, ren §11-102-18 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-19 Service of process. (a) The commission shall cause to be served all orders, notices and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

(b) All papers served by either the commission or any party shall be served upon all parties or their counsel. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(c) The final order, and any other paper required to be served by the commission upon a party, shall be served upon such party and a copy shall be furnished to counsel of record.

(d) Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail to the last known address.

(e) Service upon parties, other than the commission, shall be regarded as complete by mail upon deposit in the United States mail, properly stamped and properly addressed to the parties involved. [Eff 6/11/95; am, ren §11-102-19 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-20 Decision of the commission. (a) All final orders, opinions or rulings entered by the commission in the proceeding and rules promulgated by the commission shall be served upon the parties participating in the proceeding by regular mail or personal delivery by the commission and shall be released for general publication.

(b) Copies of such published material shall be available for public inspection in the office of the commission or may be obtained upon request and upon payment of fees as required by law, if any. [Eff 6/11/95; am, ren §11-102-20 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

SUBCHAPTER 5

RULEMAKING PROCEDURES OF THE COMMISSION

§11-2-21 Repealed. [R 12/23/02]

§11-102-22 Initiation of rulemaking. (a) The commission may, at any time on its own motion, initiate proceedings for the adoption, amendment or repeal of any rule of the commission. Procedures to be followed shall be as set forth in rules and the applicable statutes.

(b) Any interested person or agency may petition the commission for the adoption, amendment or repeal of any rule of the commission. Petitions for rulemaking filed with the commission will become matters of public record.

(c) Petitions for rulemaking shall conform to the requirements of section 11-102-15 and shall contain:

- (1) The name, address and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) A draft or the substance of proposed rule or amendment or a designation of the provisions the repeal of which is desired;
- (4) A statement of the petitioner's interest in the subject matter; and
- (5) A statement of the reasons in support of the proposed rule, amendment or repeal.

(d) The commission shall, within thirty days after the filing of a petition for rulemaking, either deny the petition or initiate public rulemaking proceedings.

(e) Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings will not be considered by the commission.

- (1) The commission shall notify the petitioner in writing of such denial, stating the reasons therefor;
- (2) Denial of a petition shall not operate to prevent the commission from acting, on its own motion, on any matter disclosed in the petition; and
- (3) Petitioner may seek a review of said denial through the circuit court pursuant to the Administrative Procedures Act and applicable rules of court and statutes.

(f) If the commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in section 11-102-23 through section 11-102-28 and the applicable statutes. [Eff 6/11/95; am, ren §11-102-22 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-23 Notice of public hearing. (a) When, pursuant to a petition therefor or upon its own motion, the commission proposes to adopt, amend or repeal a rule or regulation, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation within the County; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings. All such

notices shall be published at least thirty days prior to the date set for public hearing.

(b) A notice of proposed adoption, amendment or repeal of a rule or regulation shall include:

- (1) A statement of the date, time and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment or repeal of a rule or regulation is proposed; and
- (3) A statement of the substance of the proposed rule. [Eff 6/11/95; am, ren §11-102-23 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-24 Conduct of hearing. (a) The public hearing for the adoption, amendment or repeal of rules and regulations shall be heard before the commission and presided over by the chair of the commission or, in the chair's absence, by another member designated by the commission. The hearing shall be conducted in such a way as to afford to interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each such hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the presiding officer from day to day or to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) Witnesses shall, before proceeding to testify, state their name, address and whom they represent at the hearing, and shall give such information respecting their appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the members of the commission or by any other representative of the commission; cross-examination by persons or agencies shall be permitted.

(e) All interested persons or agencies will be afforded an opportunity to submit data, views or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and seven copies are requested when submitting written comments, recommendations or replies.

(f) Unless otherwise specifically ordered by the commission, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable,

seven copies of the exhibits shall be submitted. [Eff 6/11/95; am, ren §11-102-24 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-25 Commission action. The commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Final action should be taken within sixty days after the final public hearing, or the expiration of any extension period for submission of written comments or recommendations. [Eff 6/11/95; am, ren §11-102-25 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-26 Emergency rulemaking. (a) Notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule or regulation upon less than thirty days notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation.

(b) The commission shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper or general circulation in the state within five days from the date of filing of the rule with the office of the county clerk. [Eff 6/11/95; am, ren §11-102-26 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§92-1, 92-8)

§11-102-27 Filing of rules. The commission, upon adopting, amending or repealing a rule and approval by the Mayor shall file certified copies thereof with the county clerk. [Eff 6/11/95; ren §11-102-27 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§91-4, 92-1)

§11-102-28 Taking effect of rules. (a) Each rule adopted, amended or repealed shall become effective ten days after filing with the county clerk. If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided that no rule shall specify an effective date in excess of thirty days after the filing of the rule with the county clerk.

(b) An emergency rule shall become effective upon filing with the county clerk for a period of not exceeding one hundred twenty days without renewal unless extended in compliance with the provisions of subdivisions (1) and (2) of section 91-3(a), Hawaii Revised Statutes;

- (1) The agency's finding and brief statement of the reasons therefore shall be incorporated in the rule as filed; and
- (2) The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the County within five days from the date of filing of the rule. [Eff 6/11/95; ren §11-102-28 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp. HRS §§91-4, 92-1)

§11-102-29 Publication of rules. The commission shall, as soon as practicable compile,

index and publish all rules adopted by the commission and remaining in effect. Compilations shall be supplemented as often as necessary and shall be revised at least once every ten years. [Eff 6/11/95; ren §11-102-29 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§91-5, 92-1)

SUBCHAPTER 6

RULES APPLICABLE TO DECLARATORY RULINGS

§11-2-30 Repealed. [R 12/23/02]

§11-102-31 Petitions for declaratory rulings. (a) On petition of an interested person or agency, the commission may issue a declaratory order as to the applicability of any rule or regulation or order of the commission.

(b) The petition shall conform to the requirements of section 11-102-15. The petition shall contain:

- (1) The name, address and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) Designation of the specific provision, rule or order in question, together with a statement of the controversy or uncertainty involved;
- (4) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (5) A statement of the petitioner's position or contention; and
- (6) A memorandum of authorities, containing a full discussion of the reasons and legal authorities, in support of such position or contention.

(c) Within sixty days after the submission of a petition for declaratory ruling, the commission shall either deny the petition in writing, stating the reasons for such denial, or issue a declaratory order on the matters contained in the petition, or set the matter for

hearing, as provided in section 11-102-32, provided, however, that if the matter is for hearing, the commission shall render its findings and decision within sixty days after the close of the hearing.

(d) The commission may, without notice or hearing, dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this part. [Eff 6/11/95; am, ren §11-102-31 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§91-8, 92-1)

§11-102-32 Request for hearing. (a) Although in the usual course of disposition of a petition for declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may in its discretion order such a proceeding set down for hearing.

(b) Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition.

(c) To the extent that such request for a hearing is dependent upon factual assertion, the request shall be accompanied by an affidavit establishing such facts.

(d) In the event a hearing is ordered by the commission, section 91-9, Hawaii Revised Statutes, shall govern the proceedings. [Eff 6/11/95; am, ren §11-102-32 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§91-9, 92-1)

§11-102-33 Applicability of order. An order disposing of a petition shall be applicable only to the factual situation described in the petition or set forth in the order. [Eff 6/11/95; am, ren §11-102-33 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§91-12, 92-1)

§11-102-34 Declaratory ruling on commission's own motion. Notwithstanding the other provisions of this part, the commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 6/11/95; am, ren §11-102-34 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§92-1)

§11-102-35 Refusal to issue declaratory order. The commission may, for good cause, refuse to issue a declaratory order with specific reasons for such determination. Without limiting the generality of the foregoing, the commission may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief;
- (3) The issuance of the declaratory order may affect the interests of the commission in litigation that is pending or may reasonably be expected to arise; or

- (4) The matter is not within the jurisdiction of the commission. [Eff 6/11/95; am, ren §11-102-35 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp. HRS §92-1)

SUBCHAPTER 7

RULES APPLICABLE TO APPEALS

§11-102-36 Standing to appeal. (a) The commission shall decide appeals from any action under chapter 76, Hawaii Revised Statutes, taken by the chief executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:

- (1) Recruitment and examination;
- (2) Classification and reclassification of a particular position;
- (3) Initial pricing of classes; and
- (4) Other employment actions under chapter 76, Hawaii Revised Statutes, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6, Hawaii Revised Statutes.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the commission. Any employee covered by chapter 76, Hawaii Revised Statutes, suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the commission. Only employees covered by chapter 76, Hawaii Revised Statutes, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the commission. [Eff 6/11/95; am, ren §11-102-36 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-37 Filing of appeal. (a) Any person who has standing to appeal shall file a petition of appeal to the commission within twenty calendar days after final notice has been sent of any adverse action by the director, appointing authority or chief executive. Appeals submitted after the time limit prescribed in this section will be considered untimely and shall not be considered an appeal by the commission.

(b) Appeals shall be filed with the office of the commission at Wailuku, Maui, Hawaii.

(c) Appeals shall conform to the requirements of section 11-2-15. [Eff 6/11/95; am, ren §11-102-37 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-38 Notice. (a) All parties shall be given written notice of hearing by either registered or certified mail with return receipt requested or personal delivery showing receipt of copy at least fifteen days before the hearing.

(b) If service by registered or certified mail is not made because of refusal to accept service or the commission or its agents has been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen days prior to the date of the hearing.

(c) The notice shall include a statement of:

- (1) The date, time, place and nature of the hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;

- (4) An explicit statement in plain language of the issues involved and the facts alleged by the agency in support thereof; provided that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved; and
- (5) The fact that any party may retain counsel if the party so desires. [Eff 6/11/95; am, ren §11-102-38 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §§91-9, 92-1)

§11-102-39 Appeal hearing. (a) An appeal shall be conducted as a contested case under chapter 91, Hawaii Revised Statutes.

(b) The commission shall, upon receipt of an appeal, order the matter set for hearing.

(c) In any appeal, all parties shall be afforded an opportunity for hearing after reasonable notice.

(d) Opportunities shall be afforded all parties present to present evidence and argument on all issues involved. The presiding officer shall consider the following procedure in admitting evidence and argument:

- (1) Opening statement by the appellant;
- (2) Opening statement by the appellee;
- (3) Presentation of appellant's case;
- (4) Resting of appellant's case;
- (5) Presentation of appellee's case;
- (6) Resting of appellee's case;
- (7) Final argument by the appellant;
- (8) Final argument by the appellee; and
- (9) Rebuttal argument by appellant.

(e) Any procedure in a contested case may be modified or waived by stipulation of the

parties and informal disposition may be made of any appeal by stipulation, agreed settlement, consent order or default; provided that waiver of any procedure includes procedural requirements of section 91-11, Hawaii Revised Statutes.

(f) Hearings shall be held at the time and place set forth in the notice of hearing, but may at such time and place be continued from day to day or to a later day or to a different place without notice other than the announcement thereof by the presiding officer or hearing officer at the hearing.

(g) The nature of the hearing, whether open or closed, shall be governed by section 11-102-6(c).

(h) Appeals shall be heard before the commission or a hearing officer duly appointed by the commission.

(i) When a proceeding is conducted before the commission itself, the proceeding shall be presided over by the chair of the commission or, in the chair's absence, by another member designated by the commission. The presiding officer at a proceeding shall have authority:

- (1) To control the course of the hearing;
- (2) To hold conferences on which the parties have had notice, for the settlement or simplification of issues;
- (3) To administer oaths and affirmations;
- (4) To grant application for and issue subpoenas;
- (5) To take or cause depositions to be taken;
- (6) To rule upon offers of proof and receive relevant evidence;
- (7) To limit lines of questioning or testimony that are irrelevant, immaterial or repetitious;

- (8) To rule upon all objections, procedural requests and motions that do not involve final determination of proceedings;
 - (9) To dispose of any other matter that normally and properly arises in the course of the proceedings; and
 - (10) To take all other actions authorized by chapter 76, Hawaii Revised Statutes, Hawaii Administrative Procedure Act, rules of the commission or by any other statute, that are deemed necessary to the orderly and just conduct of the hearing.
- (j) No hearing officer or commissioner shall be assigned to serve in any proceeding:
- (1) Who has any pecuniary interest in any matter or business involved in the proceeding;
 - (2) Who is related within the first degree by blood or marriage to any party to the proceeding; or
 - (3) Who has participated in an investigation preceding the institution of the proceeding or in a determination that it should be instituted or in the development of the evidence to be introduced therein.
- (k) The record of the hearings shall be compiled in conformance with section 91-9(e), Hawaii Revised Statutes.
- (1) Provisions for stenographic record of the proceedings shall be made by the commission, but it shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review; and
 - (2) A copy of the record of a hearing or any part thereof may be obtained as provided under section 11-102-5(c).

(1) Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the State of Hawaii at any designated place of hearing may be issued by the presiding officer or any designated member of the commission or by the hearing officer. Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose instance the witnesses appear. Fees for the depositions shall be paid by the party at whose instance the depositions are taken.

(1) Application for subpoenas shall be made in writing to the commission or hearing officer. The application shall specify the particular documents or data desired and shall show their relevancy to the issues involved;

(2) Applications shall be made at least ten days prior to the hearing. If application is made at a later date, the commission may, in its discretion, issue subpoenas and/or continue the hearing or any part thereof; and

(3) Enforcement of obedience to subpoenas issued by the commission and served pursuant to these rules will be effected by written application by any member of the commission to any circuit judge.

(m) At the commencement of the hearing, the presiding officer or hearing officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Such procedure, unless specifically prescribed in these rules or by the Hawaii Administrative Procedure Act or by any other applicable statute, shall be such as in the opinion of the presiding officer or hearing officer will best serve the

purposes of the hearing without prejudice to any party.

(n) All parties shall be given reasonable opportunity to offer testimony with respect to matters relevant to the proceeding.

(1) Witnesses shall, before proceeding to testify, state their name, address and whom they represent at the hearing and shall give such information respecting their appearance relevant to the proceeding as the presiding officer or hearing officer may request;

(2) The presiding officer or hearing officer shall confine the testimony to the matters for which the hearing has been called, but need not apply the technical rules of evidence except as required by statute;

(3) Each witness shall be subject to questioning by members of the commission and by any representative of the commission;

(4) Each witness shall also be subject to cross-examination by the adverse party; and

(5) Each party shall have the right to submit rebuttal evidence and rebuttal argument.

(o) The commission or hearing officer shall take notice of judicially recognizable facts and may take notice of generally recognizable technical or scientific facts within the commission's or hearing officer's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(p) At the hearing, the presiding officer or hearing officer may require the production of further evidence upon any issue.

(q) After all the evidence has been presented, the commission or hearing officer shall give the parties opportunity to summarize. Within reasonable time after such final arguments have been completed and all requested memoranda submitted, the commission or hearing officer shall bring the matter to a close.

(r) The commission or hearing officer shall permit parties to file proposed finding and conclusions, together with the reasons therefor at the close of the hearing or within such time as is extended at the discretion of the commission or hearing officer.

- (1) Such proposal shall be in writing and shall contain references to the record and to the authorities relied upon; and
- (2) Copies thereof shall be furnished to all parties. [Eff 6/11/95; am, ren §11-102-39 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-40 Commission action. (a) If the commission finds that the chief executive, director or appointing authority violated any applicable civil service rule, law or policy, the commission shall grant such relief to the appellant as allowed by law. If the commission finds that the chief executive, director or appointing authority did not violate any applicable civil service rule, law or policy, the commission shall deny the appeal and uphold the action of the chief executive, director or appointing authority. [Eff 6/11/95; am, ren §11-102-40 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-40.1 Mediation. Whenever the commission determines that mediation may result in a satisfactory resolution of an appeal, may narrow the issues on appeal, or otherwise expedite a decision, the commission may require the parties to submit the issues to mediation, which shall not be subject to chapter 92, Hawaii Revised Statutes. Mediation may be provided by any member or members of the civil service commission or by a public or nonprofit agency which offers mediation or similar services for resolving or narrowing differences among the parties. [Eff 12/23/01] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-41 Findings and decision. (a) Every decision and order adverse to a party to the proceeding, rendered by the commission, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law.

(b) If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding presented.

(c) The findings and decisions of the commission shall be final on all appeals, unless an appeal is taken as provided in chapter 91, Hawaii Revised Statutes. [Eff 6/11/95; am, ren §11-102-41 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-42 Notice of decision. (a) The commission shall, as soon as practicable after the close of the hearing, notify the parties to the proceeding of the decision and order.

(b) Parties to the proceeding shall be notified by delivering or mailing a certified

copy of the decision and order and any accompanying findings and conclusions to each party or to the party's attorney of record. [Eff 6/11/95; am, ren §11-102-42 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-43 Counsel. When an appeal hearing is before the civil service commission of the County of Maui, the attorney general (or the designated deputy attorney general) shall be counsel for the commission and the corporation counsel (or the designated deputy corporation counsel) shall be counsel for the appointing authority or the director.

When the decision and order of the commission is appealed as provided in chapter 91, Hawaii Revised Statutes, the attorney general (or the designated deputy attorney general) shall be counsel for the commission and the corporation counsel (or the designated deputy corporation counsel) shall be counsel for the appointing authority or the director. [Eff 6/11/95; am, ren §11-102-43 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp: HRS §92-1)

§11-102-44 Judicial review. Judicial review shall be as provided by law. [Eff 6/11/95; ren §11-102-44 and comp 12/23/02] (Auth: HRS §§76-71, 76-47, 91-2) (Imp. HRS §92-1)

§11-102-45 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property, or circumstances is held invalid for any reason, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end these rules are

declared to be severable. [Eff 6/11/95; ren §11-102-45 and comp 12/23/02] (Auth: HRS §91-2)
(Imp: HRS §91-2)